



DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

**STATE OF HAWAII**  
**OFFICE OF THE DIRECTOR**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION**

**TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

**THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2015**

**MONDAY, MARCH 16, 2015  
2:00 PM**

**TESTIMONY ON S.B. 464, S.D. 1, RELATING TO CONSUMER PROTECTION.**

**TO THE HONORABLE ANGUS L.K. McKELVEY, CHAIR,  
AND TO THE HONORABLE JUSTIN H. WOODSON, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs (“DCCA”), Office of Consumer Protection (“OCP”) appreciates the opportunity to testify in support of Senate Bill No. 464, S.D. 1, Relating to Consumer Protection. My name is Stephen Levins and I am the Executive Director of the OCP.

Senate Bill No. 464, S.D. 1 enhances the regulation of automatic renewal clauses by requiring persons charging a consumer’s credit or debit card or account for automatic renewal to: obtain an acknowledgment and affirmative consent of the consumer; establishes notice, disclosure and contact information requirements; and requires a method of cancellation for free trial offers and an opportunity to cancel before the commencement of automatic billing.

An automatic renewal clause in a contract provides that the term of the contract will automatically renew at the end of the specified term, unless a party provides advance notice of its intent to cancel by a designated deadline. If inadequate disclosures are provided to consumers, they will not appreciate the significance of the agreement and may find that they are tied into a lengthy contract that they neither understood nor wanted.

Based on complaints received from consumers over the years, the Office of Consumer Protection has observed that the problematic aspects of automatic renewal clauses fall into three broad categories:

1. failing to disclose adequately or misrepresenting the material terms of the offer;
2. failing to obtain consumers' express informed consent before billing or charging them; and
3. failing to provide effective means for consumers to cancel.

Clear disclosure of all terms and conditions in a consumer contract is a fundamental tenet of consumer protection law. Businesses should not be allowed to slip in binding contractual language without the knowledge of consumers and no consumer should continue to be laden with a legal obligation that they don't understand or affirmatively accept.

Amending section 481-9.5, as proposed by Senate Bill No. 464, S.D. 1, will help to ensure that Hawaii consumers will enjoy the same protection from automatic renewal clauses as those in California. This is because the amendments contained in S.D. 1 are

very similar in nature to the law in California. See, Cal. Com. Code sections 17600-17606.

This measure is laudable because it specifically addresses the problematic areas of automatic renewal clauses, outlined above, in a clear and meaningful way. It will help to ensure that Hawaii consumers will be made fully aware of all of the terms and conditions of the automatic renewal clause. In view of this, the Office of Consumer Protection is in strong support of this measure.

Thank you for the opportunity to support Senate Bill No. 464, S.D.1. I am available for any questions you have regarding this Bill.

**Testimony of  
Gary M. Slovin / Mihoko E. Ito  
on behalf of  
Consumer Data Industry Association**

DATE: March 15, 2015

TO: Representative Angus McKelvey  
Chair, Committee on Consumer Protection and Commerce  
*Submitted via [CPCtestimony@capitol.hawaii.gov](mailto:CPCtestimony@capitol.hawaii.gov)*

RE: **S.B. 464, S.D.1 – Relating to Consumer Protection**  
**Hearing Date: Monday, March 16, 2015 at 2:00 p.m.**  
**Conference Room: 325**

---

Dear Chair McKelvey and Members of the Committee:

We offer this testimony on behalf of the Consumer Data Industry Association (CDIA). Founded in 1906, CDIA is an international trade association that represents about 150 data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, fraud prevention, risk management, employment screening, tenant screening and collection services.

CDIA submits **comments** regarding S.B. 464, S.D.1, which would prohibit any person who sells or offers to sell products or services pursuant to a consumer contract with a specified term from charging a customer for an automatic renewal or continuous service without first obtaining the acknowledgement and affirmative consent of the customer. CDIA has one technical concern with the word "acknowledgement" on page 3, line 4 and would respectfully request that the bill be clarified.

Although this bill was intended to mirror a 2010 California law, in its current form, it deviates in one aspect. The California law includes two key principles -- notice and consent -- by requiring that: 1) acknowledgement be provided to the consumer and 2) affirmative consent of the consumer be obtained.

S.B. 464, S.D.1 currently aligns with the California law, except for the term "acknowledgement" at page 3, line 4. By the inclusion of the additional term "acknowledgement," this bill could be read to require an additional acknowledgment,

---

Gary M. Slovin  
Mihoko E. Ito  
C. Mike Kido  
Tiffany N. Yajima

999 Bishop Street, Suite 1400  
Honolulu, HI 96813  
(808) 539-0840

besides the one already provided for in subsection (e) (page 3, lines 9-18).

To conform the bill to existing federal and state notice and consent laws and to avoid creating additional confusion in the law, CDIA respectfully suggests that bill be amended at page 3, line 4 to delete the reference to “acknowledgment” in that section.

Thank you for the opportunity to testify on this measure.

200 Akamainui Street  
Mililani, Hawaii 96789-3999  
Tel: 808-625-2100  
Fax: 808-625-5888



Honorable Angus McKelvey, Chair  
Honorable Justin Woodson, Vice Chair  
House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
Honolulu, HI 96813

**RE: SB 464 SD1 – Relating to Consumer Protection – Comments; requesting amendments**

March 16, 2015; 2:00 p.m., Hawaii State Capitol Room 325

Aloha Chair McKelvey, Vice Chair Woodson, and members of the committee,

On behalf of Oceanic Time Warner Cable, which provides a diverse selection of entertainment, information, and communication services to over 425,000 Hawaii households, schools and businesses and currently employs more than 1,000 highly-trained individuals, we appreciate the opportunity to offer comments and suggested amendments to SB 464 SD1.

SB 464 SD1 amends Section 481-9.5, Hawaii Revised Statutes, to require persons that offer an automatic renewal or continuous service of products and services to obtain the acknowledgement and affirmative consent from the consumer of the renewal terms prior to charging the consumer's credit/debit card or the consumer's account. The bill further amends HRS Section 481-9.5 to require various disclosures from any person who sells or offers products for an automatic renewal or continuous service, including the cancellation policy, contact information and any changes in the material terms of an offer.

While Oceanic continues to be supportive of the intent of providing information to consumers so that those consumers may make informed and reasoned decisions, Oceanic believes that the amendments proposed by SB 464 SD1 go far beyond the original scope of HRS Section 481-9.5 to reasonably limit the applicability of required disclosures to consumer contracts that have a specified term of more than one month and automatic renewals of more than one month. See Haw. Rev. Stat. Sec. 481-9.5(a), (b) and (c). Oceanic believes that for routine month to month contracts for household services that consumers expect to be provided on a regular basis, such as cable television, Internet and related services, consumers reasonably expect to be charged on a month to month basis and further disclosures will not materially assist

consumers with respect to such agreements. In addition, given the volume of month to month agreements that such providers typically process (and in Oceanic's case, many of these agreements are initiated via telephone and made on an oral basis), the benefit of additional disclosures proposed by SB 464 SD1 for all agreements with automatic renewal provisions (regardless of the term) would be outweighed by the additional costs that will be likely passed on to consumers as businesses implement the required disclosures for all agreements with renewal clauses.

Given the foregoing issues, Oceanic, as more fully described in the attached redline version of the bill with suggested amendments, believes that a reasonable approach to protect consumers with respect to automatic renewals would be to make it expressly clear in the bill that the disclosures proposed by subsections (d), (e), (f) and (g) of HRS Section 481-9.5 only apply to consumer contracts with a specified term of more than one month and an automatic renewal clause to renew the contract for more than one month. These revisions would be consistent with the intent of HRS Section 481-9.5 to strike a reasonable balance between protecting consumers from longer contracts and renewal clauses and other types of household service contracts that consumers fully and reasonably expect will continue on a regular basis and will be renewed monthly.

We ask for your favorable consideration in passing this measure with our requested amendments. Thank you.

Sincerely,

Gregg Fujimoto  
President of Oceanic Time Warner Cable

Attachment



---

## A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. Section 481-9.5, Hawaii Revised Statutes, is amended to read as follows:

"[+]§481-9.5[+] **Automatic renewal clauses.** (a) Any person who sells or offers to sell any products or services to a consumer pursuant to a consumer contract that has a specified term of more than one month and an automatic renewal clause under which the contract will automatically renew for a specified term of more than one month unless the consumer cancels the contract, shall disclose the automatic renewal clause and the procedure by which the consumer can cancel automatic renewal of the consumer contract clearly and conspicuously in the consumer contract.

(b) Any person who sells or offers to sell any products or services to a consumer pursuant to a consumer contract that has



a specified contract term of twelve months or more, under which the contract will automatically renew for a specified term of more than one month unless the consumer cancels the consumer contract, shall notify the consumer clearly and conspicuously:

- (1) That the consumer contract will automatically renew unless the consumer cancels the contract;
- (2) How to cancel the contract; and
- (3) The deadline by which the consumer shall respond to cancel the consumer contract and prevent automatic renewal.

The notice provided to the consumer under this subsection shall be sent to the consumer no less than thirty days and no more than sixty days before the date upon which the consumer shall respond under paragraph (3).

(c) The notice to the consumer required by this section may be provided electronically if the:

- (1) Transaction for sale of products or services was conducted electronically at the election of the consumer and in compliance with the requirements of chapter 489E, the uniform electronic transactions act; or
- (2) Consumer elects to receive electronic communications and provides a valid electronic-mail address for the

purpose of receiving the notice required by this section.

(d) No person shall charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service pursuant to a consumer contract subject to subsections (a) or (b) without first obtaining the consumer's acknowledgment and affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

(e) No person shall fail to provide an acknowledgment pursuant to a consumer contract subject to subsections (a) or (b) that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. If the offer includes a free trial, the person shall also clearly and conspicuously disclose in the acknowledgment how to cancel and allow the consumer to cancel before the consumer pays for the goods or services.

(f) A person making automatic renewal or continuous service offers pursuant to a consumer contract subject to subsections (a) or (b) shall provide a toll-free telephone number, electronic mail address, postal address only when the seller directly bills the consumer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be

clearly and conspicuously described in the acknowledgment specified in this section.

(g) In the case of a material change in the terms of the automatic renewal or continuous service offer pursuant to a consumer contract subject to subsections (a) or (b) that has been accepted by a consumer in Hawaii, the person shall clearly and conspicuously provide the consumer with a notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.

~~[(d)]~~ (h) Any person who knowingly violates this section or who knowingly fails to cancel an automatic renewal contract upon consumer request shall be deemed to have engaged in an unfair method of competition and unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2.

~~[(e)]~~ (i) This section shall not apply to any:

- (1) Financial institution subject to chapter 412 to the extent that the financial institution is engaged in activities regulated pursuant to chapter 412; and
- (2) Insurer subject to chapter 431, 432, or 432D to the extent that the insurer is engaged in activities regulated pursuant to those chapters.

~~[(f)]~~ (j) For purposes of this section:

"Clearly and conspicuously" means in larger type than the surrounding text; in contrasting type, font, or color to the surrounding text of the same size; or set off from the surrounding text of the same size by symbols or other marks in a manner that clearly calls attention to the language. In the case of an audio disclosure, "clear and conspicuous" and "clearly and conspicuously" mean in a volume and cadence sufficient to be readily audible and understandable.

"Consumer" shall have the same meaning as in section 480-1."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2050.

**Report Title:**

Unfair and Deceptive Practices; Free Trial Offers; Automatic Renewals; Continuous Service Offers

**Description:**

Requires persons charging a consumer's credit or debit card or account for automatic renewal or continuous service offer to first obtain the consumer's acknowledgment and affirmative consent. Requires acknowledgment of terms, cancellation policy, and how to cancel to be provided. Requires free trial offers to clearly and conspicuously disclose how to cancel the agreement prior to the consumer being charged for goods and services. Requires clear and conspicuous disclosure of cancellation mechanisms and notice of material changes in the terms of an automatic renewal or continuous service offer. Effective 07/01/2050. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

**SB 464 SD1**

**RELATING TO CONSUMER PROTECTION**

**KEN HIRAKI  
VICE PRESIDENT – GOVERNMENT & COMMUNITY AFFAIRS  
HAWAIIAN TELCOM**

**March 16, 2015**

Chair McKelvey and members of the Committees:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on SB 464 SD1 - Relating to Consumer Protection.

Hawaiian Telcom does not oppose SB 464 SD1 which amends HRS 481-9.5 but asks that the bill be amended to clarify that the proposed subsections (d) (e) (f) or (g) shall be consistent with the existing requirements governing consumer contracts with terms of more than one month and with an automatic renewal clause subject to subsections (a) or (b).

We respectfully request the following amendments:

On page 3, lines 3 and 8 after the word “service” please include the phrase “pursuant to a consumer contract subject to subsections (a) or (b).”

On page 3, line 16 after the word “offers” please include the phrase “pursuant to a consumer contract subject to subsections (a) or (b).”

On page 4, line 2 after the word “offer” please include the phrase “pursuant to a consumer contract subject to subsections (a) or (b).”

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov  
Sent: Sunday, March 15, 2015 8:53 AM  
To: CPCtestimony  
Cc: jamesjtz@aol.com  
Subject: Submitted testimony for SB464 on Mar 16, 2015 14:00PM

**SB464**

Submitted on: 3/15/2015

Testimony for CPC on Mar 16, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
James Gauer	Individual	Support	No

Comments: This bill strongly advocates for consumer protection against fraudulent third parties and also gives the consumer security in knowing how and who is taking their credit card information, is trustworthy and credible.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE INTERNET  
COALITION REGARDING S.B. No. 464, SD 1**

**Monday, March 16, 2015**

**2:00 pm**

To: Chairman Angus McKelvey and Members of the House Committee on Consumer Protection and Commerce:

My name is Bob Toyofuku and I am presenting testimony on behalf of the Internet Coalition regarding S.B. No. 464, SD 1, Relating to Consumer Protection.

SB No. 464 appears to basically follow the California law with regard to “free trial offers” and “automatic renewals”. However, the Senate Draft 1 has modified some of the basic language that is of concern to the Internet Coalition.

Specifically, the concern relates to the term “obtaining the consumer’s acknowledgment” on lines 3 & 4 on page 3 of the bill. This provision aligns with the California law except for this phrase. It is unclear what would be required to “obtain the acknowledgment” of a consumer beyond an affirmative consent since other references to “acknowledgment” outline what must be provided to a consumer and not what must be obtained. This additional requirement would create a new obligation which would not necessarily provide additional benefit to a consumer.

The Internet Coalition is requesting that this committee consider modifying the phrase to align it with the California law.

Thank you for the opportunity to present this testimony and feel free to contact me if you have any questions on this issue.